

WILLIAMSBURG BOARD OF ZONING APPEALS MINUTES

June 4, 2002

The regular meeting of the Williamsburg Board of Zoning Appeals was held on Tuesday, June 4 at 3:00 p.m. in Conference Room 3B, Third Floor, Williamsburg Municipal Building, 401 Lafayette Street.

ATTENDANCE

Present were Board members Chohany, Carr, Kafes, Knudson, and White. Also present were Zoning Administrator Murphy and Secretary Scott.

CALL TO ORDER AND MINUTES

Chairman Kafes called the meeting to order.

Mrs. Knudson moved that the minutes of the May 7, 2002 meeting be approved as submitted. The motion carried viva voce.

PROCEDURES

Chairman Kafes gave a brief overview of BZA procedures. The steps in the review process:

- Chairman reads case description
- Zoning Administrator responds to any questions the Board may have regarding the case
- Applicant responds to any questions the Board may have regarding the case
- Chairman opens the public hearing. Time limits for speakers are imposed during the public hearing.
- Once all speakers have been heard the Chairman closes the public hearing
- Board discusses the case and votes. The majority of the Board carries the vote

Mr. Kafes stated that all three cases on the agenda today are requests for special exceptions and are subject to two sets of conditions:

1. Zoning Ordinance Section 21-97(f)2 states that six issues shall be considered in reaching a decision on the authorization of a special exception. These are:
 - Stated intent of the zoning district in which the property is located;
 - Uses in the area immediately surrounding the property in question;
 - Amount of traffic generated;
 - Number of people to be employed;
 - Hardship that would result from the denial of the special exception, and

- Such other criteria as may be prescribed for a particular special exception under other sections of this chapter.
- 2. The Ordinance also states that the Board shall not approve a special exception unless it is found that:
 - It is designated, constructed and operated to adequately safeguard the health, safety and welfare of the occupants of the adjoining and surrounding property;
 - It does not unreasonably impair an adequate supply of light and air to adjacent property;
 - It does not increase public danger from fire or otherwise unreasonably restrict public safety;
 - It does not impair the established property values in surrounding areas.

PUBLIC HEARINGS

BZA #11-02 Request of Paula and Willoughby Newton for a special exception request from Section 21-705.1 for property located at 28 Frenchmens Key, Williamsburg Tax Map Number 554-(04)-00-096, and zoned Planned Unit Development. The applicant proposes to construct a single-family dwelling, which will result in total lot coverage of 20% for parking and driveways on the lot instead of the maximum 15% total lot coverage. Approved with Contingencies.

Sheldon Franck, attorney for the applicants Willoughby and Paula Newton who were also present, distributed to the Board copies of changes in the plans showing a smaller house resulting in the opportunity to put in more plantings for screening on the left side of the driveway.

Mr. Franck noted that there are a number of misconceptions related to this case:

- This is a request for a special exception, not a variance
- This is not an attempt to circumvent the Port Anne architectural review board
- This is not an effort to build an oversized house
- This is not a proposal that would be out of character with the community

He continued by saying that this is a proposal that takes into account the topography of this particular lot and attempts to provide a less massive streetscape by avoiding a front-loading garage. Included is a plan to provide plant screening for the neighbor impacted. There are no health or safety issues involved and the proposal is consistent with the nature of the Port Anne community.

Board discussion points included:

- Aggregate is required for driveways

- Although a front-loading garage is not required, a two-car garage is a requirement
- Originally the streets were private and no overflow parking was provided. Recently the streets have become City streets.
- If the special exception is not approved, in addition to the “garage with a house attached” not being aesthetically pleasing, Mrs. Newton stated that there would be no outdoor living space. If approved they would be able to put in grass and plantings otherwise not possible.

There being no other comments from the Board Chairman Kafes opened the public hearing.

David Schultz, 10 Frenchmens Key, noted that the Board has a copy of his letter in opposition to the granting of this request. He said Port Anne is a PUD with special conditions attached. There is a preponderance of front-loading garages in the development and the Newton’s plans may need to be modified to be consistent in character. He states that another issue is the probably substantial stormwater runoff.

David Reichert, stated that he lives at 29 Frenchmens Key which is directly across the street from the Newton lot, and he has no objection to the proposal. He said that all potential property owners are given a book of Port Anne requirements and regulations before they purchase and the driveway issue is not addressed in the book, so the Newton’s were not aware of driveway concerns. He stated that he would like the Newtons to be “cut some slack” and noted that the letters written in opposition to the Newton’s proposal are from prior or existing Port Anne board members, and he has never before seen such a politically driven effort. Mr. Reichert concluded by saying the Newtons should be able to build the house they choose and that their house plan will be enhanced by having the concrete in the back.

Doug Springmann who will soon be moving into his new home at 24 Frenchmens Key, stated that the BZA has his letter of opposition to the approval of this request. He said that he never stated that the excessive driveway is appropriate, even though Mr. Schultz reported that he had. Mr. Springmann said that Port Anne rules are made available to everyone and that he had to alter his house plans to fit the community. He concluded his comments by saying that he has had conversations with the Newtons and wish them well, but the Port Anne package includes restrictions on the amount of coverage and the Newton proposal is inappropriate. He added that the runoff from the driveway would be substantial.

In her letter, **Victoria West**, 36 Frenchmens Key, addressed the importance of protecting the greenspace and urged the Board to deny the request. She said that in October 2001 the Newtons were advised that their proposed plan would not be approved by the Port Anne ARB, and in February 2002 they were again notified of the lack of approval.

Pete Vollmer, who owns lot 97 and will begin building a residence next summer, stated that the BZA has his letter of opposition, however, based on the alternative site plan submitted this afternoon by the Newtons, he rescinds his objection and supports their request for a special exception.

There being no other comment the public hearing was closed.

Mrs. Newton noted that contrary to Mrs. West's statement, she and her husband didn't even find the lot until **November** of 2001. Mrs. Newton said that during the period of time she and her husband were submitting plans to the Port Anne Review Board there was not any discussion regarding driveways. The Port Anne board rejected the submitted design and said they needed a front-loading garage. The Newtons had a design with a front-loading garage prepared, but it just didn't work on their lot. The Vollmers are the only residents who will really be impacted by their proposal and they have rescinded their opposition after seeing the revision today. She added that their engineer reports there are no drainage issues.

Some of the Board comments follow:

1. It is not so much the appearance of the driveway coverage that is of concern, but the amount of impervious surface and the resulting runoff
2. Neighbor's comments are strongly taken into consideration by the Board in making their decision
3. The topography of the lot is very challenging
4. Sympathetic to argument to "play by the rules," however the purpose of the special exception is to provide a safety valve
5. This lot presents a good argument in favor of a side-loading garage

Mr. Kafes moved that the request for a special exception be approved with contingencies based on the revised development plan dated 3/22/02 which was submitted to the Board today. The contingencies placed on the approval follow:

- A landscape plan shall be submitted and approved by the Zoning Administrator along the south side of the proposed driveway, adjacent to Lot 97 and the common area, to screen the adjacent properties.
- A dry well shall be installed at the left rear corner of the driveway to contain additional runoff for the additional driveway area.

The motion for approval was based on Zoning Ordinance Section 21-97(f)2 which states that the following items shall be considered in reaching a decision:

- Stated intent of the zoning district in which the property is located;

- Uses in the area immediately surrounding the property in question;
- Amount of traffic generated;
- Number of people to be employed;
- Hardship that would result from the denial of the special exception, and
- Such other criteria as may be prescribed for a particular special exception under other sections of this chapter.

Mr. Chohany seconded the motion which carried by roll call vote of 3-1-1.

Aye: Carr, Chohany, Kafes

No: Knudson

Absent: None

Abstain: White

Mrs. Knudson noted that she voted “no” due to the runoff issue and because she believes we all need to work within the established rules.

BZA #12-02: Request of Phillip Richardson/Holiday Inn Patriot for a special exception request from Section 21-702 of the Zoning Ordinance to locate parking on an adjoining lot on Patriot Lane with a cooperative parking agreement. Specifically, the applicant would like to construct 40 rooms to the motel and construct a 63-space parking lot on a vacant parcel at the entrance to Westgate Condominiums adjacent to the hotel on Patriot Lane. The property is located at 141 Patriot Lane, Williamsburg Tax Map Number 282-(08)-00-001 and is zoned Tourist Business District B-3. Approved with contingencies.

Mr. Carr stated that he will abstain from discussion and voting on this case due to his business involvement with the submitting party.

Chairman Kafes introduced the case and invited the applicant and representatives to comment.

Present at the meeting were applicant Phil Richardson; Attorney Vernon Geddy, III; and from AES, Consulting Engineers, Richard Costello. Mr. Geddy stated that the property is deed restricted to parking use only and the request is for the additional parking required due to the additional hotel rooms to be fulfilled by a cooperative parking agreement in accordance with Section 21-702 of the Zoning Ordinance which states:

- (a) Offstreet parking facilities required by this article shall be located on the same lot or parcel of land that they are intended to serve. For nonresidential uses, where practical difficulties prevent such location or where the public safety or the public convenience would be better served by an alternate location, the board of zoning appeals may authorize an alternate or

cooperative location as a special exception. Any authorization shall be subject to the provisions of section 21-97(f) and the following:

- (b) An alternate location provides parking only for the use in question.
- (c) A cooperative location provides for two or more uses, and shall have combined parking spaces equal to the sum required for the separate uses.
- (d) Such parking spaces shall be conveniently and safely accessible to pedestrians.
- (e) All such parking spaces shall be on property zoned properly for the use or uses which require the parking spaces.
- (f) The right to use such property for parking shall be established by deed, easement, lease or similar recorded covenant or agreement, shall be approved as to form and content by the city attorney, shall be recorded in the clerk's office of the circuit court of the city and the County of James City so as to ensure the availability of such spaces for a minimum time period of at least five years.
- (g) Should such offstreet parking spaces become unavailable for use at some future time, an equal number of parking spaces shall be constructed and provided on either the primary site or by another offsite arrangement meeting the requirements of this article. Failure to provide or construct such replacement parking spaces within 90 days from the date on which the use of the previously available offstreet spaces was terminated shall be a violation of this chapter.
- (h) For churches and other permanent buildings used for religious worship, alternate or cooperative parking agreements may be approved that do not provide exclusive parking rights, provided that such agreement provides adequate parking at appropriate times to meet the parking needs of the church or other permanent building used for religious worship.

The applicant proposes to attach a declaration of covenants and conditions on the subdivision, which is acceptable to Joseph F. Phillips, City Attorney conditioned upon certification that Phillip Richardson Company, Inc. owns both parcels and that the mortgage holder concurs with the covenant.

Section 21-97(f)2 states that a special exception shall not be approved by the Board of Zoning Appeals unless it is found that:

- 1. It is designated, constructed and operated to adequately safeguard the health, safety and welfare of the occupants of the adjoining and surrounding property;
- 2. It does not unreasonably impair an adequate supply of light and air to adjacent property;

3. It does not increase public danger from fire or otherwise unreasonably restrict public safety;
4. It does not impair the established property values in surrounding areas.

Another consideration is whether there is anywhere on the existing hotel parcel that a parking lot can be constructed without requiring a special exception from the Board of Zoning Appeals. It was noted that although the tennis courts on the site are infrequently used, the applicant would prefer the courts not be torn up.

Other discussion points included:

- Three of the six magnolias could be saved
- Would like a traffic light at the intersection of Patriot Lane and Richmond Road but more likely it will be placed at the Outback intersection
- Although it would be a lighted lot, there would be a 50' buffer between the lot and adjacent Westgate Condominiums
- Safety concern for pedestrians -- crosswalk may be a condition for approval, as well as handicap-accessible ramps
- If approved by the BZA the proposal would then be subject to full site plan review

Chairman Kafes opened the public hearing.

Steve Pasco, 302 Westgate Circle, said that he is very concerned with the proposal for 40 more hotel rooms and a 63 space parking lot, and presented a petition of 70 Westgate resident signatures who also object to the plan. The petition states that the signees oppose the special exception for the following reasons:

1. "It would put hotel clientele with all the associated rowdiness and late night partying too close to the residents of Westgate Condominiums and the Micand Retirement Center, 251 Patriot Lane, Williamsburg, Va. This would lower our property values.
2. It would destroy the beautiful entranceway into Westgate Condominiums.
3. The in and out traffic of the hotel annex would be burdensome to the residents of Westgate Condominiums.
4. When the residents of Westgate Condominiums asked to have more parking for the development we were flatly denied. The reason cited was that no green space could be lost. We feel that the Board of Zoning Appeals should not even consider this request on the same grounds."

Jim Sublett, 1401 Westgate Circle, secretary of the homeowners association at Westgate, spoke for Joe Inman, 1804 Westgate Circle, president of the association who was unable to attend the meeting today due to family illness. Mr. Sublett read a prepared statement from Mr. Inman in which the question was raised of whether the lot is part of Westgate green space or not. Mr. Inman also questioned the ability of buses to maneuver a turn around in the lot. His statement concluded by noting that the petition urges denial of the special exception.

Robert Frankie, 2702 Westgate Circle, expressed confusion over ownership of the property and concern over increased traffic to the site. He said the police have been called a number of times about the noise from Holiday Inn guests and he's concerned about the safety factor of increased visitors/guests.

Lois Roberts, 102 Westgate Circle, stated that she has lived in Williamsburg for 43 years and she is concerned about the safety issue of hotel occupants walking around the property. Also she said they were lead to believe that the parcel would be used for much needed handicap parking. She added that there are cattails and marshland on the site.

Dawson Hardin, 1901 Westgate Circle, stated that he also has been a Williamsburg resident for 43 years and finds this proposal unacceptable for the reasons stated in the petition.

There being no other comment the public hearing was closed.

In response to comments made during the public comment session, Mr. Costello said that the cattails mentioned won't be disturbed and drainage will go into the pond. The magnolias left will not block the view since only their trunks will be at such a height to interfere with vision.

Although the deed is on his desk and has not yet been signed, Mr. Geddy said that Phil Richardson is owner of the site. After confirming with Mr. Richardson, Mr. Geddy stated that the owner would be willing to give some of the space for Westgate parking.

Mrs. White asked that Mrs. Murphy read the permitted uses for this site which is zoned B-2. After this was read Mrs. White pointed out that the property could still be used as a parking lot if Mr. Richardson conveyed the lot.

Mr. Chohany suggested the applicant might want to defer action to take advantage of an opportunity to have additional discussion with the residents of the Westgate community.

The applicant said he will have further conversation with the residents, but asked that action by the Board be taken today.

Mr. Knudson moved that the special exception to establish a cooperative parking agreement at 141 Patriot Lane be approved with the following conditions in accordance with Section 21-702 of the Zoning Ordinance noted above:

1. Wheelchair accessible curb cuts being constructed on both sides of Patriot Lane where the sidewalk along Patriot Lane connects with the sidewalk to the front of the conference center.

2. That the applicant, if approved by the appropriate City department, construct a crosswalk across Patriot Lane to the sidewalk to the conference center.
3. That light poles for the parking lot not exceed 15 feet in height.
4. That landscaping for the buffer area along the rear adjacent to Westgate and along the driveway along Westgate must be approved by the Zoning Administrator.

Mr. Kafes seconded the motion which carried by vote of 3-1-1.

Recorded vote on the Motion:

Aye: Knudson, Kafes, White

No: Chohany

Abstain: Carr

Absent: None

BZA #13-02: Request of George Haasenstab (Rosie Rumpe's Dinner Theatre) for a special exception request from Section 21-754 of the Zoning Ordinance for property located at 1402 Richmond Road, Williamsburg Tax Map Number 403-(01)-00-002 zoned General Business B-3 and located in the Corridor Sign District. The applicant proposes to reface the existing nonconforming sign, which is 10'8" in height without bringing the sign into compliance with the current ordinance requirements, which requires signs not to exceed eight feet in height. Approved with Contingencies.

Chairman Kafes introduced the case and invited the applicant/applicant's representative to comment.

George Haasenstab of Rosie Rumpe's, stated that there is no other location on the property where the sign can be moved and have the necessary visibility. He would face an economic hardship if the sign is brought into conformance by lowering the 10'8" height to the current maximum of eight feet. Mr. Haasenstab stated that he is all for keeping it a good-looking, informational sign, but it needs to be seen.

Chairman Kafes dispensed with the public hearing portion of the meeting since there was no one in the audience to speak.

Board members suggested several solutions, such as cutting off the top of the sign or combining the adjacent business sign with Rosie's, but there were circumstances that prohibited these suggestions. Additional Board comments:

- Very conflicted. This is in Corridor Sign District and is a very important location, but there is a clear hardship demonstrated if brought into conformance
- Will be an overall enhancement

- Usually very tough on signage, but this is a clear hardship
- Would be an unreasonable burden to deny this request

Mr. Chohany moved that the special exception be approved based on fulfillment of Section 21-754 of the Zoning Ordinance. In addition, it is found that:

1. It is designated, constructed and operated to adequately safeguard the health, safety and welfare of the occupants of the adjoining and surrounding property;
2. It does not unreasonably impair an adequate supply of light and air to adjacent property;
3. It does not increase public danger from fire or otherwise unreasonably restrict public safety;
4. It does not impair the established property values in surrounding areas.

The approval is granted only for Rosie Rump's Dinner Theatre and any change in tenant or business must meet current ordinance requirements or resubmit to the Board of Zoning Appeals for approval of a special exception or variance.

Mrs. Knudson seconded the motion which carried by a vote of 5-0.

Recorded vote on the motion:

Aye: Carr, Chohany, Kafes, Knudson, White
No: None
Absent: None

OLD BUSINESS – None

NEW BUSINESS – None

OTHER

Board of Zoning Appeals Bylaws

Mr. Kafes distributed to Board members a draft of the Board of Zoning Appeals Bylaws. This will be one of the topics on the agenda for the next meeting.

Procedures in Other Jurisdictions

Mrs. White said that due to the late hour, she will give her report on other jurisdictions' procedures at the next meeting.

There being no further business before the Board the meeting adjourned at 5:30 p.m.

Respectfully submitted,

Judy Knudson, Secretary